

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LOUIS M. GARRIDO,

Plaintiff,

v.

Case No. 2:21-cv-171-JLB-NPM

JOSEPH A. FISCELLA and USA
SECURITY SERVICES INC.,

Defendants.

ORDER

Before the Court is a Motion for Entry of Clerk's Default (Doc. 10). Plaintiff Louis M. Garrido requests the Court direct the Clerk to enter a default against USA Security Services Inc. and Joseph Fiscella. No response was filed to the motion and the response time has lapsed. For the reasons discussed below, the Court grants the motion.

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Before directing the clerk to enter a default, however, the Court must determine whether Plaintiff properly effected service of process, for which Plaintiff bears the burden of proof. Fed. R. Civ. P. 4(l); *Chambers v. Halsted Fin. Servs., LLC*, No. 2:13-CV-809-

FTM-38, 2014 WL 3721209, *1 (M.D. Fla. July 28, 2014); *Zamperla, Inc. v. S.B.F. S.R.L.*, No. 6:13-CV-1811-ORL-37, 2014 WL 1400641, *1 (M.D. Fla. Apr. 10, 2014).

To serve an individual within a judicial district of the United States, Rule 4(e)(2) allows for service by “delivering a copy of the summons and of the complaint to the individual personally” or by “leaving a copy of [the summons and complaint] at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there.” Fed. R. Civ. P. 4(e)(2)(A)-(B). On March 18, 2021, Joseph A. Fiscella was served by substitute service at his residence. The process server delivered copies of the summons and complaint to Melody Fiscella as co-resident, who resides at the residence and is of suitable age. (Doc 9). Therefore, the Court finds the Garrido properly effected service of process on Joseph A. Fiscella.

Service on an entity defendant can be made by any manner prescribed in Rule 4(e)(1) by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Fed. R. Civ. P. 4(h)(1)(A) & 4(e)(1); *see also Chambers*, 2014 WL 3721209, at *1. Or, service can be effected “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process” Fed. R. Civ.

P. 4(h)(1). Likewise, under state law, a corporation may be served through its registered agent. Fla. Stat. § 48.081(3)(a). Section 48.081(3)(b) provides that if the address for the registered agent is a residence, then service on the corporation may be made by serving the registered agent in accordance with § 48.031. Section 48.031 permits substitute service by leaving copies of the service documents at the person's usual place of abode with any person residing therein who is 15 years of age or older and informing the person of the contents of the documents. Here, on March 18, 2021, the process server served USA Security Services, Inc. at a residence by serving Melody Fiscella, the wife and co-resident of the registered agent. (*See* Docs. 8, 9).

Therefore, the Court finds Garrido properly effected service of process on both USA Security Services, Inc. and Joseph A. Fiscella. The Defendants were properly served and failed to timely respond to the Complaint (Doc. 1). Therefore, the Court finds a clerk's default must be entered pursuant to Rule 55(a).

Accordingly, the Motion for Entry of Clerk's Default (Doc. 10) is **GRANTED** and the Clerk is directed to enter a default against Defendants USA Security Services, Inc. and Joseph A. Fiscella.

Within thirty-five (35) days after entry of a clerk's default, Garrido must apply for the default judgment or must file a paper identifying each unresolved issue necessary to entry of the default judgment. M.D. Fla. R. 1.10(c).

ORDERED in Fort Myers, Florida on June 23, 2021.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE